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No. ——

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

FRANK A. FORD, ETC., *et al.*,
Appellants,

v.

DEPARTMENT OF REVENUE, STATE OF FLORIDA, ETC., *et al.*,
Appellees.

On Appeal from the Supreme Court of the State of Florida
(Alternative Petition for Certiorari)

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

PRELIMINARY STATEMENT Appellants believe the first question presented herein to be appealable. The second question, which concerns the main federal question issue decided below, standing alone would be reviewable only by certiorari. If the Court accepts appeal jurisdiction, then appellants also seek review of the second question, since both questions arise under the judgment sought to be reviewed. However, favorable review of the second question, which is the more important question to appellants, may render the first moot. If the Court deems the appeal to have been taken improvidently, then appellants respectfully request that the Notice of Appeal and this Jurisdictional Statement be considered as a Petition for Certiorari pursuant to 28 U.S.C. Section 2103.

I.

Whether Section 194.192(2), Florida Statutes, insofar as the same requires imposition of personal liability against a taxpayer consequent upon unsuccessful litigation of the validity of an ad valorem tax assessment of mineral or other subsurface rights, is void for denial of equal protection required by the Fourteenth Amendment of the Constitution of the United States, when the statute authorizing such taxation, being Sec. 193.481(1), Florida Statutes, specifically provides that such taxation shall be against the subsurface interests and not against the owner or owners thereof.

II.

Whether there is a denial of Fourteenth Amendment equal protection to taxpayers whose mineral and other subsurface rights are assessed and taxed pursuant to law (Sec. 193.481, Florida Statutes) in one county while substantially all similar property is not assessed and taxed in other counties in a multi-county taxing district, where

the state has enacted mandatory laws for achievement of uniform assessments in ad valorem taxation and created a Department for administration of the laws, and where the Department fails and refuses to perform its duty of supervision to require compliance by county appraisers with the particular law and condones systematic and deliberate refusal to comply with that law.

Under the same circumstances, whether there is a denial of Fourteenth Amendment equal protection to taxpayers whose property is valued and taxed in one county at a level higher than the general level of assessments of substantially all similar property in other counties in a multi-county taxing district.

LIST OF PARTIES

The civil actions below were brought to contest tax assessments. The taxpayers may be aligned on one side and the taxing authorities on the other. The taxpayers are:

1. FRANK A. FORD
2. BERENICE A. FORD
3. EMMA G. FORD
4. EUGENE M. SPEER
5. MYRTLE E. SPEER
6. HAROLD T. CHITTUM, JR.
7. BETTY J. CHITTUM
8. HAROLD T. CHITTUM, JR., TRUSTEE
9. BARBARA ANN BRAME
10. R. J. FULLER
11. RUDMAN RESOURCES, INC., a corporation

The taxing authorities are:

1. RANDY MILLER, as Executive Director of the Department of Revenue of the State of Florida.

2. JOHN W. TURNER, JR., Property Appraiser of Volusia County, Florida.

3. DAVID EDWARDS, Tax Collector of Volusia County, Florida.

4. COUNTY OF VOLUSIA, a Political Subdivision of the State of Florida.

5. In some cases, predecessors in office were parties in place of the above named parties, and in some cases members of Boards of Tax Adjustment in such capacity were named as parties.

Counsel on this Jurisdictional Statement have represented the FORD and the SPEER-CHITTUM-BRAME taxpayers, but not the R. J. Fuller and Rudman Resources, Inc. taxpayers.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	(i)
LIST OF PARTIES	ii
TABLE OF CONTENTS	(v)
TABLE OF AUTHORITIES	vi
REFERENCE TO REPORTS OF OPINIONS BELOW	1
GROUNDS ON WHICH JURISDICTION IS INVOKED	1
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	2
STATEMENT OF THE CASE (AND JURISDICTIONAL STATEMENT)	5
THE QUESTIONS ARE SUBSTANTIAL	12
APPENDIX (separately bound)	18
CONCLUSION	18

TABLE OF AUTHORITIES

Cases: Page

Cumberland Coal Co. v. Board of Revision, 284 U.S. 23 (1931) 10, 11
Douglas v. Alabama, 380 U.S. 415 (1965) 9
Fair Assessment In Real Estate v. McNary, 454 U.S. 100 (1981) 12
Hillsborough Township v. Cromwell, 326 U.S. 620 (1946) 11, 12
Iowa-Des Moines National Bank v. Bennett, 284 U.S. 239 (1931) 12
Liggett Co. v. Lee, 288 U.S. 517 (1932) 16
New York Ex. Rel. Bryant v. Zimmerman, 278 U.S. 63 (1928) 10
Rosewell v. Lasalle National Bank, 450 U.S. 503 (1981) 12
Sioux City Bridge Co. v. Dakota County, 260 U.S. 441 (1923) 11, 12
Wright v. Georgia, 373 U.S. 284 (1963) 10

U.S. Constitutional Provisions:

Article 6 ..... 3, 12
Article 14 (Fourteenth Amendment) 2, 3, 6, 10, 11, 12, 14, 17

United States Statutes:

28 U.S.C. § 1257(2) 2, 10
28 U.S.C. § 1257(3) 2
28 U.S.C. § 1341 3
28 U.S.C. § 2103 18

State Constitutional Provisions & Statutes:

Article VII, Section 2, Constitution of the State of Florida 3, 14
Article VII, Section 4, Constitution of the State of Florida 4, 14
Section 55.10(1), Florida Statutes 4, 13
Section 193.011, Florida Statutes (1981) 4
Section 193.461, Florida Statutes 4
Section 193.481, Florida Statutes 4, 5, 6, 8, 12, 13

TABLE OF AUTHORITIES—Continued

	Page
Section 194.032(6) (b) and (c), Florida Statutes	4
Section 194.171, Florida Statutes	2, 4, 5, 12
Section 194.181, Florida Statutes	2, 4, 5, 12
Section 194.192, Florida Statutes	2, 4, 7, 9, 10, 12, 13, 14
Section 195.0012, Florida Statutes	4
Section 195.002, Florida Statutes	4
Section 195.027(1), Florida Statutes	4, 15
Section 195.032, Florida Statutes	4, 15
Section 195.092(1), Florida Statutes	4
Section 195.096, Florida Statutes	4
Section 195.097, Florida Statutes	4

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On Appeal from the Supreme Court of the State of Florida (Alternative Petition for Certiorari)

JURISDICTIONAL STATEMENT

REFERENCE TO REPORTS OF OPINIONS BELOW

Department of Revenue v. Ford, 438 So.2d 798 (Fla. 1983) (Appendix 1a-11a).

Florida Department of Revenue v. Ford, 417 So.2d 1109 (Fla. 5th DCA 1982) (Appendix 12a-32a).

The Final Judgment of the Circuit Court of Volusia County, Florida, dated 18 November, 1980, was not reported. (Appendix pp. 33a-58a).

GROUNDS ON WHICH JURISDICTION IS INVOKED

Nature of the Proceeding

This cause is on appeal of a judgment of the Supreme Court of the State of Florida (Alternative Petition for Certiorari). Final judgment of the trial court against

the taxpayers was reversed by the Fifth District Court of Appeal of Florida. The Supreme Court of Florida reversed the Fifth District Court of Appeal and ordered reinstatement of the final judgment with regard to matters involved herein.

Date of Entry of Judgment

The judgment sought to be reviewed was entered September 8, 1983. (App. 1a). Rehearing was denied November 4, 1983. (App. 59a). Notice of appeal was filed in the Supreme Court of Forida December 22, 1983. (App. 60a).

Statutory Basis of United States Supreme Court Jurisdiction

I

Jurisdiction is conferred on this Court by 28 U.S.C. § 1257(2) in that the opinion and judgment of the Florida Supreme Court, in reinstating the trial court judgment, necessarily draws in question the validity of Sec. 194.192(2), Florida Statutes, which requires imposition of personal liability against a taxpayer who has unsuccessfully attacked ad valorem tax assessments in the manner provided by Florida Statutes 194.171 and 194.181.

II

This Court has jurisdiction of the question of denial of equal protection under the Fourteenth Amendment of the Constitution of the United States, concerning the assessment issues, pursuant to 28 U.S.C. Section 1257(3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. Federal Law.

Article 14 (14th Amendment) of the Constitution of the United States says:

> "SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.*" (emphasis supplied)

Article 6 of the Constitution of the United States, in the second paragraph thereof, says:

> . . . "This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." . . .

28 U.S.C. § 1341, says:

> "Taxes by States
>
> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

2. State Law.

Applicable Florida constitutional provisions and statutes, being lengthy, are printed in the Appendix to this Jurisdictional Statement. Amendments which have been made to various Florida taxing statutes during the litigation of these consolidated cases and the review process do not affect the questions on appeal. The Appendix hereto contains:

1. Article VII, Section 2, Constitution of the State of Florida. (App. 76a)

2. Article VII, Section 4, Constitution of the State of Florida. (App. 76a)

3. Section 193.011, Florida Statutes (1981). (App. 77a-78a)

4. Section 193.461, Florida Statutes. (App. 78a-81a)

5. Section 193.481, Florida Statutes. (App. 81a-82a)

6. Section 194.032(6)(b) and (c), Florida Statutes. (App. 83a)

7. Section 194.171, Florida Statutes. (App. 83a-84a)

8. Section 194.181, Florida Statutes. (App. 84a-85a)

9. Section 194.192, Florida Statutes. (App. 85a-86a)

10. Section 55.10(1), Florida Statutes. (App. 86a)

11. Section 195.0012, Florida Statutes. (App. 86a)

12. Section 195.002, Florida Statutes. (App. 87a)

13. Section 195.027(1), Florida Statutes. (App. 87a)

14. Section 195.032, Florida Statutes. (App. 87a-88a)

15. Section 195.092(1), Florida Statutes. (App. 88a)

16. Section 195.096, Florida Statutes. (App. 88a-93a)

17. Section 195.097, Florida Statutes. (App. 93a-95a)

STATEMENT OF THE CASE (AND JURISDICTIONAL STATEMENT)

The cases were brought under Sections 194.171 and 194.181, Florida Statutes (App. 83a-85a), whereby a taxpayer is provided a remedy of circuit court action for contesting tax assessments. The judgment involves thirteen actions which were consolidated for trial, all of which were instituted by the taxpayers except four which were filed by the Appraiser. The cases concerned the validity of ad valorem tax assessments of certain separately held mineral or other subsurface rights in land located in Volusia County, Florida, which assessments were made pursuant to Section 193.481, Florida Statutes. (App. 81a-82a)

The opinions below, particularly the Final Judgment and the Fifth District Court of Appeal opinion, adequately delineate the facts and quote most of the applicable Florida Statutes.

In the first nine paragraphs of the Final Judgment the trial court (Circuit Court of Volusia County) found against the taxpayers on all valuation arguments (App. 34a-41a), and in the remainder of the opinion discussed uniformity, discrimination and equal protection arguments (App. 42a-54a). The trial court found [paragraph 11(d)] that the Florida Department of Revenue had taken no serious or effective action to require compliance with Section 193.481, Florida Statutes, and that there was no evidence of plans or intentions to do so [paragraph 11(e)]; that the clear mandatory requirements of Section 193.481, Florida Statutes, had been flagrantly disregarded by the Department and several Florida property appraisers; that the appraisers did not try and fail —that they simply did not try; that they improperly and officiously exercised a discretion they did not possess; *that valuation discretion had no bearing on this particular problem*; that the statute had been conscientiously implemented in Volusia County (paragraph 12); that

the Department had not properly discharged its duties (paragraph 13).

In paragraph 16, the trial court commented on the flagrant violation of law by Florida public officers which was established in the record, held it important for courts of equity to insist that the law be obeyed, declined to become a passive accessory to disregard of the law, and held that the judicial conscience of the court was shocked.

Paragraph 17 observed that Volusia County did not exist in a world of its own and held that the actions of property appraisers in other counties within the St. Johns River Water Management District legitimately concerned the taxpayers. The Final Judgment said:

> "If the plaintiffs' feet are held to the fire in Volusia County while identically-situated owners of subsurface rights in other Florida counties are deliberately and systematically given a free ride by their property appraisers, a court of equity will not cast a glass eye upon plaintiffs' complaint".

The trial court then fashioned an injunctive order against the Department, requiring the Department to take such action as appropriate and necessary to insure uniform implementation and enforcement of Sec. 193.481, Florida Statutes, at the earliest possible time.

Paragraph 15 of the Final Judgment specifically denied taxpayers' contentions that this course of conduct under the supervision of the Department of Revenue of the State of Florida resulted in violation of Fourteenth Amendment equal protection. Accordingly, the trial court denied any relief to the taxpayers with regard to the years of assessments which had been attacked, and in paragraph 2 of the decretal portion of the Judgment adjudged the contested tax amounts "to be due and payable by the respective Plaintiffs to the Volusia County Finance Department". (App. 55a). The court in para-

graph 6 of the decretal portion retained jurisdiction to enforce the Judgment against the Plaintiffs. (App. 56a).

On a motion for rehearing in the trial court, the taxpayers first argued the impropriety of entry of a judgment calling for personal liability as required by Section 194.192(2), Florida Statutes. Rehearing was denied.

The Fifth District Court of Appeal held that Florida's taxing statutes had been applied unconstitutionally to the taxpayers and reversed the trial court, but did not reach the question of constitutionality of Sec. 194.192(2), Florida Statutes. The Fifth District Court also reversed the injunctive order against the Department of Revenue. (App. 30a-32a).

The Fifth District Court, in reversing, examined the history of the particular law authorizing taxation of mineral rights and ultimately held (App. 31a) that:

> ". . . the result of the trial court's findings is that the Department of Revenue's failure to implement Section 193.481, Florida Statutes, by appropriate regulations had resulted in the taxpayers' subsurface rights being assessed in Volusia County when substantially all of similar property was not assessed in the other counties within the multi-county taxing unit known as the St. Johns River Water Management District and that the taxpayers' property so assessed was valued at a level higher than the general level of assessment of substantially all other similar property in other counties in the St. Johns River Water Management taxing district."

The District Court of Appeal, therefore, held that the taxpayers were entitled to relief from illegal assessment and directed the trial court to declare the assessments illegal, null and void.

The Supreme Court of Florida agreed that the Florida Department of Revenue is charged with fulfilling the intention of the legislature that ad valorem taxation laws be enforced, implemented, and administered uniformly

throughout the State; that central to this duty was responsibility of supervising the Florida property appraisers and other taxation officials to ensure they comply with the law; and that the evidence clearly supported the conclusion of both the trial judge and the District Court that the Department had taken no serious or effective action to require all Florida property appraisers to comply with the requirements of Section 193.481, Florida Statutes, to assess subsurface interests. That court then said (App. 3a):

> "Nevertheless, we cannot agree with the District Court's ultimate conclusion that the fact that these taxpayers' subsurface rights were assessed in Volusia County when substantially all similar property was *not* assessed in *other* counties in the Water Management District and that the taxpayers' property so assessed was valued at a level higher than the general level of assessments of substantially all other similar property in *other* counties in the district entitles those taxpayers to relief from their assessments."

The Supreme Court of Florida affirmed the Fifth District Court only insofar as that court had reversed the injunctive order against the Department of Revenue, and otherwise reversed the Fifth District Court and directed affirmance of the approved portion of the final judgment. The Florida Supreme Court held that the trial judge had no authority to enter the injunction against the Department of Revenue and said, "In all other respects the final judgment of the trial judge is approved". (App. 10a)

The taxpayers then moved for rehearing in the Supreme Court of Florida on several grounds (App. 61a-68a). The motion was summarily denied by the order of November 4, 1983 (App. 59a). In the Application for Rehearing to the Florida Supreme Court, the taxpayers principally argued, on the question of personal judg-

ments, that imposition of personal liability was an unconstitutional abridgement of access to the courts of Florida under Art. I, Sec. 21 of the Florida Constitution, but did say in their motion, "It results in a denial of equal protection merely from going to court".

I—Jurisdiction

The pertinent part of Section 194.192(2), Florida Statutes (App. 85a-86a), says:

> "(2) If the court finds that the amount of tax owed by the taxpayer is greater than the amount the taxpayer has in good faith admitted and paid, *it shall enter judgment against the taxpayer* for the deficiency and for interest on the deficiency . . .". (emphasis supplied)

Since the Fifth District Court ordered that the assessments be nullified, the taxpayers-respondents could not have asserted invalidity of Section 194.192(2), Florida Statutes, as an additional ground for upholding the Fifth District Court decision. The Florida Supreme Court Judgment itself draws into question the validity of this statute as a part of the statutory package under which the taxpayers were required to seek relief.

It is improbable that this question ever would be raised in a trial contesting assessments, since a taxpayer is placed in the predicament of having to assert unconstitutionality of a portion of the statutes under which he is required to seek relief from the assessments. The question only arises upon loss of the cause by the taxpayer.

A petition for rehearing is a poor and almost universally unsuccessful vehicle for raising questions that were not reviewed. But state procedural bars which preclude or make difficult the adequate assertion of federal questions may in themselves constitute federal questions. See *Douglas v. Alabama*, 380 U.S. 415 (1965); and

Wright v. Georgia, 373 U.S. 284 (1963). In *Wright v. Georgia*, it appears that constitutionality of a statute was raised on a motion for new trial, as it was also in *Cumberland Coal Co. v. Board of Revision*, 284 U.S. 23 (1931).

Standing alone the assertion of the Motion for Rehearing might not be a sufficient preservation of Fourteenth Amendment arguments directed toward validity of Section 194.192(2), Florida Statutes. The argument should be considered in light of the fact that appellants had argued their right to Fourteenth Amendment equal protection with regard to the main issues and reasserted their right in the Motion. Appellants respectfully submit that although their preservation of federal question number I on the Petition for Rehearing may be minimal, it should be considered sufficient. If the record as a whole shows either expressly or by clear implication that a federal right is presented, it should be sufficient to preserve it. See *New York Ex. Rel. Bryant v. Zimmerman*, 278 U.S. 63 (1928). The record as a whole shows, and even the judgment of the trial court itself shows, that Fourteenth Amendment equal protection was insisted upon vigorously. By clear implication, that is what the appellants referred to on their application for rehearing to the Florida Supreme Court, when they asserted that the particular law of Florida resulted in a denial of equal protection merely from seeking relief in the courts. The judgment is appealable under 28 U.S.C., Section 1257(2).

II—Jurisdiction

As to uniformity in assessment, the taxpayers first asserted reliance upon the Fourteenth Amendment at the trial level. The Fifth District Court of Appeal held the assessments bad but did not explicitly base the holding on the federal right. The Florida Supreme Court ordered reinstatement of the trial court opinion and judgment which had denied there was a Fourteenth Amendment

equal protection violation. The federal question ruling is inherent in the Florida Supreme Court's judgment.

Previously the Supreme Court of Florida, in cases cited in the judgment sought to be reviewed, when dealing with assessments within a single county, had recognized a denial of Fourteenth Amendment equal protection to taxpayers whose property is taxed at full value when all or substantially all of the same class of property is taxed at a lower percentage of value. The Florida Supreme Court simply stops equal protection at the county line, notwithstanding it specifically approved the lower court rulings that the Florida Department of Revenue has utterly failed to perform its duty under Florida law to implement Section 193.481, Florida Statutes, and deliberately and systematically permits other counties within a multi-county taxing district to omit separately held mineral and other subsurface rights from taxation. The Department successfully has resisted an injunction of the trial court that it perform its duties and ultimately has succeeded in obtaining the Florida Supreme Court's approval of the *results* of its actions and inactions, even while that Court confirmed the Department's failures.

This Court has held that the Fourteenth Amendment protects taxpayers from state action which selects them for discriminatory treatment by subjecting them to taxes not imposed on others of the same class. *Hillsborough Township v. Cromwell*, 326 U.S. 620 (1946). Fourteenth Amendment equal protection is denied to taxpayers whose property in a county (taxing unit) is assessed at full value while other property in the same taxing unit is assessed at a significantly lower fraction of the value. *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923), and *Cumberland Coal Co. v. Board of Revision*, 284 U.S. 23 (1931). The constitutional equal protection right is not achieved if a state does not itself remove the discriminatory enforcement of its taxation laws, but leaves the burden to taxpayers to try to require taxing

authorities to comply with the law. Where a few are taxed deliberately and systematically in a discriminatory manner, these principles apply whether there is an omission to tax others or whether others are taxed on significantly lower assessments. The remedy, by virtue of the Fourteenth Amendment and the supremacy clause, is to reduce or eliminate the tax on the few who are singled out. See *Hillsborough Township v. Cromwell* and *Sioux City Bridge Co. v. Dakota County*, supra, and *Iowa-Des Moines National Bank v. Bennett*, 284 U.S. 239 (1931).

The judgment of the Florida Supreme Court is in direct conflict with the cited cases of this United States Supreme Court on the issue of Fourteenth Amendment equal protection and on the remedy; so this Court's jurisdiction is clear.

THE QUESTIONS ARE SUBSTANTIAL

I

Under 28 U.S.C. § 1341, and under this court's cases of *Fair Assessment In Real Estate v. McNary*, 454 U.S. 100 (1981) and *Rosewell v. Lasalle National Bank*, 450 U.S. 503 (1981), taxpayers are required to assert their federal question attacks upon state taxation in state tribunals if the state affords a "plain, speedy and efficient remedy". Florida affords such remedy in Sections 194.171 and 194.181, Florida Statutes. The Florida law, Section 193.481, requiring ad valorem taxation of separately held mineral and other subsurface rights provides that the taxation will be only against such interests and specifically precludes personal liability, where it says:

> . . . "Such taxation shall be against such subsurface interest and not against the owner or owners thereof or against separate interests or rights in or to such subsurface rights."

The Florida Statute, Sec. 194.192(2), which requires adjudication of personal liability as a consequence of un-

successful assertion of one's rights in good faith is a burden upon the plain, speedy and efficient remedy which precludes a taxpayer from going to federal court to assert his federal questions. It causes such taxpayers to be discriminated against and not treated equally with other taxpayers who are taxed on identical mineral and other subsurface rights. Those who question assessments in the required way suffer imposition of personal liability if they lose.

Subsection 193.481(5), Florida Statutes, contemplates enforcement of payment of such taxes on mineral rights as in other cases of non-payment, by lien on the specific property and issuance of tax deed. On the other hand, a personal judgment carries with it significant detriment and liability with regard to other property of a taxpayer, since under Sec. 55.10(1), Florida Statutes (App. 86a), such personal judgment becomes a lien upon real estate of such judgment debtor in any county where a certified copy of it is recorded. Thus, if a certified copy of the Final Judgment in this case is recorded, in Volusia as well as in other counties of the State, it would constitute a lien against other properties of appellants and thus be enforceable in a manner totally different and more onerous than the general statutory methods for collection of unpaid ad valorem taxes. Further, personal judgments severely affect credit reputation, while tax liens against specific property and tax deeds are not so injurious.

Paragraph 3 of the decretal portion of the reinstated Final Judgment even adjudicates the amounts to be due "in addition to" sums which might be exacted for redemption of tax certificates (App. 55a). Should potential double exposure be the just desserts of those who have the temerity to question their assessments on federal constitutional grounds?

The classification inherent in Section 194.192(2), Florida Statutes, is arbitrary and unjustified. The attach-

ment of penalties to good faith but unsuccessful assertion of federal (or state) rights is unnecessarily chilling and invidiously discriminatory. Appellants submit that the equal protection question of statutory validity of Section 194.192(2), Florida Statutes, is substantial and deserving of plenary consideration by this court.

II

[Alternatively, Rule 21(j)]

The Fourteenth Amendment right of equal protection is a restriction on the power of the state in administration of its own laws.

The Florida Constitution in Article VII, Sec. 2, provides that "ad valorem taxation shall be at a uniform rate within each taxing unit". Then in Article VII, Sec. 4, the Florida Constitution provides that the legislature may prescribe general laws to "secure a just valuation of all property for ad valorem taxation".

Under these organic provisions, the Florida Legislature has reached for a goal of uniform assessments from county to county and has enacted Chapter 195, Florida Statutes. (See pertinent statutes, App. 86a-95a.) Patently, uniformity in rate within a taxing unit is near meaningless without some effort to achieve uniformity in just valuation. The Department of Revenue of the State of Florida is given the power and duty to oversee the enforcement of the laws of ad valorem taxation in order to achieve the stated legislative intent.

Hand in hand with the legislative goal of uniform assessments has come the legislative creation of multi-county taxing districts. The St. Johns River Water Management District is one of those. (Footnote to Fifth District Court of Appeal opinion, App. 13a.) Volusia County lies in that district, as do numerous other counties referred to in the final judgment; and a portion

of the overall tax which may be collected against assessed property in Volusia County is the millage levy of the multi-county St. Johns River Water Management District. This exacerbates and makes more glaring the assessment omissions and practices condoned in other counties by the Florida Department of Revenue.

The Florida Legislature has defined *separately held* mineral or other subsurface rights as constituting a class of taxable property and mandatorily required the taxation. The Department fails and refuses to perform its duty, with the result that substantially all taxpayers who own that class of property in other counties are not taxed while taxpayers who own that class of property in Volusia County are taxed.

This major aspect of question II does not involve discretion in valuation, as pointed out by the trial court; although equal protection does come into play with regard to valuation. Even where there is isolated taxation of separately held mineral parcels in other counties, there is not a semblance of uniformity in application of valuation criteria. The Fifth District Court of Appeal correctly observed that uniformity of assessment will not occur without regulations for assessment of this peculiar class of property; but the Department has not promulgated such regulations or standards of valuation, although required to do so by Sections 195.027(1) and 195.032, Florida Statutes.

There are several practical reasons, mostly as observed by the Fifth District Court of Appeal, why the Department and various tax appraisers won't enforce the law; but these practical reasons do not excuse deliberate and intentional state action. *The actions of the Department and other appraisers together constitute state action.*

The trial court found the material facts of discrimination but would not declare the contested assessments invalid. Instead the trial court tried to enjoin the De-

partment to carry out its duties. This would have afforded no relief to the taxpayers as to the discriminatory asssessments.

The appellees (respondents) have cited in courts below this Court's case of *Liggett Co. v. Lee*, 288 U.S. 517 (1932), in contending that "two wrongs don't make a right" and that the taxpayers cannot attack their own assessments by showing that others are allowed to escape taxation, and apparently in contending that the remedy is mandamus. But *Liggett Co. v. Lee* did not pertain to ad valorem taxation of real estate. Further, in *Liggett Co. v. Lee*, it appears that a few escaped taxation while most in the particular class were taxed; whereas in the present case there is systematic omission to enforce the law in the taxing district, except in Volusia County. *Liggett Co. v. Lee* helps the appellants in showing that a county line furnishes no reasonable measure of tax, and such line would appear to furnish no reason for failure to impose a tax of statewide application.

Ad valorem tax cases previously cited herein show that it is no remedy at all to taxpayers to try to get taxing authorities to comply with the law in the future. Such purported remedy leaves intact the discriminatory assessements which the taxpayers have questioned in the manner they must under Florida and federal law. The judgment sought to be reviewed not only leaves the discriminatory assessments intact but has concurred in reversal of the trial judge's effort to require the State to do something about it in the future. Citing and extending one of its own cases, the Florida Supreme Court held the taxpayers cannot compel the Department to do its duty under the facts of this case. On this point, the Fifth District Court reversal of the injunction was procedurally based; *but the Florida Supreme Court went out of its way to make the ruling substantive, holding that the taxpayers had no cause of action.* (App. 9a).

The judgment sought to be reviewed says there is no detriment to Volusia County taxpayers who are taxed properly, according to the opinion, pointing out that in other counties surface owners *who do not own* mineral rights under their lands may nevertheless be taxed on them. (App. 10a). That incredible assertion epitomizes the want of equal protection. Absolution from taxation of *separately held* mineral rights should be uniform. Taxpayers are concerned with *who* is taxed, as well as with the amount of tax. [The State of Florida itself owns large acreages of *separately held* mineral rights by reservation in Murphy Act tax deeds, a fact which was observed by the Fifth District Court of Appeal (App. 20a, sixth line from bottom); and credit should be given on the surface assessments.]

The judgment sought to be reviewed affirms the trial court's holding that there is no Fourteenth Amendment equal protection violation. Citing its own cases dealing with *valuation discretion* concerning differences in assessments, the Florida Supreme Court now says that the complete failure to tax separately held subsurface interests in other counties within the District is not such denial of federal right as to entitle the taxpayers to relief. That is a peculiar interpretation of the Fourteenth Amendment. This Court's cases previously cited neither state nor imply such exception for counties within a single taxing unit. Appellants are taxed on their separately held subsurface rights, while identically situated owners of separately held subsurface rights in other counties within the multi-county taxing unit are "given a free ride" by the taxing authorities; ***and if that course of state action does not constitute a denial of equal protection, then the Fourteenth Amendment of the Constitution of the United States holds a hollow promise, gutted by the Florida Supreme Court.*** Indeed, the applicable principles are not limited to the St. Johns River Water Management District, but apply throughout the state,

because the legislature has mandated taxation of a class of property and the goal of uniformity.

The questions involved here are of great significance concerning ad valorem taxation of separately held mineral and other subsurface interests in this State. Florida flaunts the facts in the face of federal rights and stonewalls that there is no violation. The questions are substantial, fundamental; and they clearly merit this Court's attention. Since taxpayers are precluded from instituting United States District Court actions to raise federal questions, a greater burden of review is placed on this Court; otherwise federal rights may be glossed over, buried and lost. The taxpayers meticulously have fought through the mazes of litigation required for assertion of their federal rights; and they have no remedy now save this United States Supreme Court. Respectfully, now is the time this Court should tell Florida that rights under the United States Constitution still apply, even though procedurally they must first be presented in state tribunals.

APPENDIX

The Appendix is separately bound and submitted pursuant to Supreme Court Rule 15(j).

CONCLUSION

Appellants respectfully ask this court to note probable jurisdiction of this appeal and to set this case for full briefing and argument. Should this appeal be deemed improvident, appellants respectfully ask that it be considered as an application for certiorari under 28 U.S.C., Section 2103, and granted and set for briefing and argument.

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